



## THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: June 1, 2005 REPORT NO. 05-131

ATTENTION: Honorable Mayor and City Council  
Docket of June 6, 2005

SUBJECT: Proposed Transfer of Responsibility for Misdemeanor Prosecution  
from City Attorney's Office to District Attorney's Office

REFERENCE: April 5, 2005 letter from District Attorney of San Diego County,  
Bonnie Dumanis, to City Attorney Michael Aguirre

### SUMMARY

Issue – In the District Attorney's Proposal, three issues were addressed: 1) Will the transfer of the misdemeanor prosecution function by the San Diego City Attorney to the San Diego County District Attorney save the City of San Diego \$2 million? 2) Would such a transfer of the misdemeanor function to the District Attorney from the City Attorney provide the same or a better level of service to the people of San Diego? 3) Does transferring the misdemeanor prosecution function from the City Attorney to the District Attorney make sense and the right thing to do for the efficiency and effectiveness of the criminal justice system?

Manager's Recommendation - Direct the City Manager to work with the Office of the City Attorney and the Office of the District Attorney to conduct further study on the three issues of 1) savings of \$2 million; 2) same or better level of service to the people of San Diego, and 3) make sense and is the right thing to do for the efficiency and effectiveness of the criminal justice system related to the proposed transfer of the misdemeanor prosecution function from the San Diego City Attorney to the San Diego County District Attorney. Further, the City Manager requests City Council's direction on additional analysis of a revised proposal provided on May 18, 2005 by the District Attorney's Office.

Fiscal Impact – Not identified at this time and would primarily be personnel time spent to further study the revised proposal.

## BACKGROUND

On April 5, 2005, District Attorney Bonnie Dumanis appeared before the City Council with a proposal for the transfer of the misdemeanors prosecution function from the San Diego Office of the City Attorney to the Office of the District Attorney. The proposal was based on three issues: 1) there would be a \$2 million savings for the City of San Diego; 2) the same or better level of service would be provided; and 3) transferring the misdemeanor prosecution function would make sense and be the right thing to do for the efficiency and effectiveness of the criminal justice system. The District Attorney asked that the proposal be studied. The Criminal Division of the City Attorney's Office is currently responsible for the prosecution of misdemeanors within the City of San Diego. The Office of the District Attorney currently handles prosecution of misdemeanors for most other areas within the County of San Diego. The City Council directed the City Manager to study the issue and return with an analysis of the proposal, conducted within four weeks.

## DISCUSSION

To study the issue, the City Manager established a small task force (see Attachment A). The team includes current and former staff from the City Attorney's Office Criminal Division, as well as City staff with knowledge in the areas of accounting, budget, competitive optimization, organizational effectiveness, and project management. The mission of the team was to objectively analyze the report presented by the District Attorney, including a review of advantages and disadvantages, budgetary, and service level impacts of transferring the responsibilities.

This proposal to transfer the responsibility for prosecuting misdemeanors has been made on three previous occasions during the past ten years. In 1995, then-District Attorney Paul Pfingst raised the issue, which was reviewed by the City Manager, opposed by City Attorney John Witt, and not approved. In 1999, the San Diego County Taxpayers Association raised the issue. It was reviewed by the City Manager, opposed by City Attorney Casey Gwinn, and not approved. In 2004, the issue was raised again by the Taxpayers Association. It was again dropped after the Mayor and several Councilmembers voiced support for the City Attorney's Criminal Division. On April 5, 2005, District Attorney Dumanis raised the proposal for a fourth time during the "public comment" portion of a City Council meeting.

### **Original Proposal – April 5, 2005**

The proposal brought forward by the District Attorney on April 5, 2005 is for the prosecution of misdemeanors in the City of San Diego to be officially transferred to the Office of the District Attorney. The District Attorney states that the proposed savings would be approximately \$2 million and includes the handling of all misdemeanor crimes such as code enforcement, driving under the influence, vandalism, drug-related, hit and run, weapons offenses, domestic violence and other quality of life crimes (i.e. noise, nuisance, dumping, etc). Under the original proposal, the responsibilities of the

following units would transfer: Screening and Arraignment Unit, Criminal Trial Unit, Appellate Unit, Code Enforcement Unit, Consumer and Environmental Protection Unit, and Child Abuse and Domestic Violence Unit. To handle the misdemeanors as originally proposed, the District Attorney proposed a staff of 35 attorneys, 8 sworn peace officer investigators and 49 support personnel for an annual contractual cost of \$10.8 million and one-time start up costs of \$639,103.

### **Revised Proposal – May 18, 2005**

The task force interviewed the District Attorney's Office to gain a better understanding of the original proposal and obtain additional information. During the meeting, the District Attorney's Office provided a **revised** proposal with the following changes and clarifications:

- The revised Proposal is to transfer the prosecution of misdemeanor State code violations. The City Attorney's current responsibilities of City of San Diego Municipal Code violations and Code Compliance, Neighborhood Prosecution, Public Integrity Unit and Drug Abatement Response Team would not be transferred. Therefore, the revised proposal recommended that the contract for prosecution services be limited to State misdemeanor offenses.
- The revised budget was updated to an annual contractual cost of \$9,535,357. This amount includes full salary and benefits for 81 staff members (30 attorneys, 6 sworn investigators and 45 support personnel). Under the proposal, an additional \$584,103 would be needed for first year start up costs. Attachment B outlines the budget for the proposed new division for the District Attorney's Office.
- The proposed savings is based on a staffing comparison, but does not address existing leases or revenues. The District Attorney's Office believes that the majority of savings would be through bundling of cases (one attorney per defendant handling all felony and misdemeanor charges) and through streamlining the current procedures.
- If the proposed contract were handled in the same manner as other County law enforcement contracts, the City would be asked to contract with the District Attorney's Office on a five year basis. The contract would be reviewed annually and updated, whenever needed. The contract could be terminated with one year's notice from either party. Currently, the District Attorney does not charge or contract with the other unincorporated jurisdictions or cities for the prosecution of misdemeanors.
- The revised proposal includes training for attorneys, coordination with law enforcement agencies, use of the County's Case Management System for better tracking, and neighborhood courts. Under the revised proposal, neighborhood

services, currently provided by the City Attorney's Office, may be done as a collateral assignment or volunteer work by the District Attorney's Office.

- Even though the revised proposal would anticipate a transition for FY 2006, there is an acknowledgement that such a transition would take 3-6 months. More study is needed of the City Attorney's current operation to further refine the revised proposal. The staff of the Office of the District Attorney anticipated that such a transfer would take up to 2-3 years to have the responsibilities fully transferred and operating as efficiently and effectively as needed.

#### VOTE OF THE PEOPLE OR VOTE BY THE CITY COUNCIL?

In her presentation on April 5, 2005, the District Attorney stated that the proposed transfer could legally take place by a vote of the City Council. In support of this position, the District Attorney cited a 1996 California Attorney General's opinion to the effect that such a transfer could take place without a vote of the electorate "if the transfer is authorized by the charter". In this opinion, the Attorney General Dan Lungren did not directly address section 40.1 of the City Charter.

In the May 17, 2005 letter to the City Attorney from Attorney General Bill Lockyer, he stated that "it has long been the policy of this office to refrain from interpreting local charter provisions or ordinances." The City Charter, section 40.1 vests the responsibility to prosecute misdemeanors within the city limits in the City Attorney's Office. Three City Attorneys (Witt, Gwinn and Aguirre) have all opined that the transfer, without a charter amendment, passed by a majority vote of the electorate, would be a violation of the City Charter and unlawful. According to the legal opinion of the City Attorney's Office (Attachment C), a proposed transfer would have to go to a vote of the people to allow the transfer.

#### CURRENT MISDEMEANOR PROCEDURES

A misdemeanor crime is generally categorized as follows: municipal code violations, quality of life crimes, driving under the influence, vandalism, drug-related, hit and run, weapons offenses, and domestic violence. If a defendant allegedly commits related felonies and misdemeanors, they are put on the same complaint and handled by the District Attorney. Unrelated misdemeanors are handled by separate prosecutors, and cannot by law, be joined together on the same complaint or prosecuted together. The courts, public defenders, jail personnel, and prosecutors have different procedures for handling misdemeanor and felony prosecutions. Cases can, with proper planning, be settled at the same time; this is called "bundling". At the downtown court, where the City Attorney handles its misdemeanor cases, this would require the two separate prosecutors to briefly confer. The opportunity to bundle happens occasionally, not often, and could be done within the existing structure by coordination of the two offices.

Bundling, which involves only one Prosecution Agency (i.e. District Attorney's Office), may produce some savings since this situation does affect a small number of cases. It

should be noted that the same process occurs currently in branches where the District Attorney handles all cases. The primary difference is that a deputy handling a felony disposition calendar might be allowed to settle a misdemeanor case without conferring with the assigned misdemeanor deputy. In comparing the number of misdemeanor cases handled by the City Attorney and the District Attorney, there were no significant differences in capacity.

## **IMPACT ON STAKEHOLDERS**

The proposed transfer of the Office of the City Attorney's prosecution of misdemeanors would affect stakeholders both within and outside of the City. Internal stakeholders include, among others, the San Diego Police Department, Neighborhood Code Compliance, the San Diego Fire-Rescue Fire Marshall, and the City Attorney's Office. The external stakeholders include the State of California Highway Patrol, State of California Fish and Game, San Diego Port District Harbor Police, Sheriff, the Public Defender and the Court. Other potential stakeholders who have expressed interest in this proposal are the San Diego Taxpayers Association and the Performance Institute. The team contacted these various stakeholders to gather their input on the services received and the impact of a potential transfer of responsibility.

### **Internal Stakeholders**

There are several City departments and officials that work closely with the City Attorney's Office. Each department was interviewed for their input on the potential impact of the proposed transfer of prosecutorial responsibilities. The representatives were asked about the impacts to their budgets, operations and service levels; what worked well with the current situation; and what might be improved or made worse if a change was made.

#### **San Diego Police Department**

The San Diego Police Department has a long history of working with both the District Attorney's and City Attorney's offices. The Police Department has worked hard to streamline the operations between their department and both the City Attorney's and District Attorney's offices. Their working relationship with both offices is good. To improve and streamline the Police coordination, two officers are assigned to the court to coordinate court cases, officer schedules and case loads with both offices. Successful changes during the past two years have resulted in almost \$500,000 in documented procedural savings. The change of responsibility to the District Attorney's Office would not significantly change these current operations or procedures, so Police does not anticipate additional savings for their department. They did not feel that there would be a significant improvement or detriment in service levels as a result of the change. If it appears to save money, they were willing to participate in any further study.

## Neighborhood Code Compliance Department

The Neighborhood Code Compliance Department (NCCD) is responsible for the enforcement of building and housing laws, and ordinances of the San Diego Municipal Code. These regulations include the State Health and Safety Code, disabled access, housing standards, and building and land development regulations such as illegal grading, historical resources, and environmentally sensitive lands. The NCCD has an effective working relationship with the Criminal Division of the City Attorney's Office. In 1984, the City Attorney's Office created a special "Code Enforcement Unit" to work exclusively with City departments responsible for enforcing various State and local health, safety and zoning regulations. The assigned attorneys have distinct knowledge of code enforcement regulations, policies and responsibilities.

Currently, NCCD staff holds weekly meetings with the Code Enforcement Unit (CEU) to discuss the merits of cases and whether a case should proceed administratively, or be prosecuted civilly or criminally by the City Attorney's Office. Located in the same building, the departments maintain a successful relationship with great accessibility, responsiveness and a partnership on code compliance issues. Training, land use and environmental expertise, as well as helping to identify out-of-town owners, quiet title actions, and liens, are additional services provided by the City Attorney's Office. Through collaboration, the departments have been successful in securing grants in support of the prosecution of code violations and tailoring an effective enforcement approach in targeted communities.

The main concern expressed with the current level of service is the need for additional staffing in the CEU to prosecute more cases and assist staff with complex matters. If the prosecution of misdemeanors was transferred to the District Attorney's office, there would be a need for new policies and procedures and a concern that code violations may be a lower priority in that office when compared to felonies. There is also a concern that the level of efficiency and responsiveness to City issues may decline, while expense of time/mileage for travel to and from County offices for meetings and coordination efforts will increase. Possible advantages of the transfer would be county-wide coordination of graffiti prosecutions and more effective prosecution of owners who have property in other jurisdictions. Additionally, there may be enhanced opportunities to share best practices and effective ordinances if all misdemeanor prosecutions were assigned to the County District Attorney.

## San Diego Fire-Rescue Fire Marshall

The Fire Marshall is pleased with the current service provided by the City Attorney's Office. They have very few cases each year, with the goal of the Fire Marshall to work with the community to educate and rectify any problems before they are elevated to the point of a court case. This office takes a community based approach to ensuring compliance with fire codes. Of the 8,000 businesses inspected each year, most violations are resolved by working with the business owners. Only approximately 4-6 of the violations turn into court cases.

The Fire Marshall receives important value added services from the City Attorney's Office. The City Attorney Criminal Division strategizes with the Fire Marshall for dealing with any issues that arise, identifies ownership of facilities being inspected, and acts in an advisory capacity regarding code issues. The Fire Marshall indicated he spends approximately 8 hours per month working together with the assigned attorney. This role of the City Attorney's office is more critical to the Fire Marshall than the prosecution of misdemeanors and would need to be maintained should the responsibilities be transferred to the District Attorney. The main concern expressed was about the potential degradation of service, or the loss of expertise and rapport that provide for the value added services which currently assist the Fire Marshall in conducting operations.

### City Attorney

The San Diego City Attorney's Office has been responsible for misdemeanor prosecution since the mid-1880's. This office has a long history of working with the City departments, the Mayor and City Council and providing representation and prosecutions on behalf of the residents of the City of San Diego. The Criminal Division is responsible for the following activities: General Trial; Issuing and Arraignment; Proposition 36: Drug Court, Dispute Resolution and Appellate. In addition, there are also specialized units including Public Integrity, Drug Abatement Response Team (DART), Neighborhood Prosecution, Code Enforcement, Domestic Violence, Child Abuse and Sex Crimes, Consumer and Environmental Protection, and San Diego Traffic Offenders Program (STOP).

Below outlines the responsibilities of the units in the City Attorney's Office.

- The Screening and Arraignment Unit (9 deputies) receives criminal investigations from various law enforcement agencies, including the San Diego Police and County Sheriff's Departments, the California Highway Patrol, various college police agencies, the San Diego Port District Harbor Police, lifeguards, park rangers, and trolley code compliance. In fiscal year 2003-2004, 45,092 cases were submitted to the office.
- The Trial Unit (22 deputies including Appellate and STOP) conducts all courtroom proceedings on the cases handled by the Criminal Division. Last year, the Criminal Division filed approximately 35,000 cases. Each month, approximately 1,600 cases are reviewed and negotiated at the readiness stage of the proceedings. Between 150 and 200 cases are set and prepared for trial. The Criminal Division's Appellate Unit handles writs, motions, and appeals of the criminal cases prosecuted by the City Attorney's Office.
- The Code Enforcement Unit (5 deputies) prosecutes public nuisances and code violations, including substandard housing, illegal businesses, vacant and boarded structures, public nuisances, illegal grading, fire hazards, illegal dumping, water theft, building and zoning violations, and destruction of sensitive resources. Many of the cases result in significant criminal fines and civil penalties.

- The Drug Abatement Response Team (2 deputies) community prosecutors investigate nuisance properties city-wide, including gang activity, prostitution, and narcotic and alcohol related offenses. DART last year handled more than 100 abatement cases.
- The Neighborhood Prosecution Unit (5 deputies) works with the San Diego Police Department, with other agencies, and with community organizations and leaders to aggressively and creatively combat crimes that lessen our quality of life, illegal lodging in the San Diego Riverbed, drug activity on C Street, transient crimes downtown, prostitution in Mid-City, and loud parties with underage drinking in the college and beach areas.
- The Consumer and Environmental Protection Unit (4 deputies) filed nearly 100 cases in the first nine months of the fiscal year, including a variety of criminal prosecutions and civil enforcement actions.
- The Child Abuse and Domestic Violence (11 deputies) has a team of specialized prosecutors and support staff employing the most advanced techniques and methods of addressing these crimes. Their cases include domestic violence and same-sex domestic violence, child abuse, elder abuse, stalking, and sex crimes.
- The Public Integrity Unit (1 deputy) enforces laws governing ethics, the misuse of City government positions and resources, and campaign contributions and elections. In addition it serves as criminal enforcement liaison to the San Diego Ethics Commission.

## **External Stakeholders**

There are several law enforcement agencies that use the services of both the City Attorney and District Attorney's office. These include California Highway Patrol, State of California Fish and Game, San Diego Port Authority Harbor Police, San Diego County Sheriff Department, Public Defender and Courts. Each agency was interviewed for their opinion of how the proposed transfer might change their operations, what was working well with the current situation, and what might be improved or made worse if a change was made.

### State of California Highway Patrol

The California Highway Patrol (CHP) has three offices in the County, including San Diego, El Cajon and Oceanside. The San Diego office covers the area from Via De La Valle south to the border, which includes City of San Diego as well as other cities. There are approximately 4,500 misdemeanor cases filed each year by the San Diego CHP office. The City Attorney handles those that occur in San Diego while the District Attorney handles any that occur in cities other than San Diego. The CHP has a good working relationship with both the City Attorney and the District Attorney. CHP staff receives consulting services and training from both offices.

The CHP indicated they are very satisfied with the service from the City Attorney, and expressed concern that level of service should remain the same should a transfer of



responsibility take place. In some circumstances, cases are sometimes reduced from felonies to misdemeanors and transferred to the City Attorney to resolve. If this occurs within the District Attorney's Office, the CHP would want to be assured that cases reduced to misdemeanors would be addressed, as opposed to dismissed, by the District Attorney's Office.

#### State of California Fish and Game

The Fish and Game Department works with both the City Attorney and the District Attorney on misdemeanor cases. In their experience, fish and game misdemeanors have historically received more attention and better results from the City Attorney's Office. The City Attorney appears to place a greater importance on the need for prosecuting misdemeanors of this type, and is more aggressive in doing so. The assigned attorneys have some background or personal experience in environmental issues or fishing. If a transfer of responsibility were to take place, they recommend a division be established in the District Attorney's Office to specifically focus on environmental issues with assigned attorneys having an environmental background and understanding of the issues. There is currently no dedicated staff assigned to these issues at the District Attorney's Office. The biggest concern is that dedicated staff be assigned to provide the same level of service currently provided by the City Attorney's Office.

#### San Diego Port District Harbor Police

The San Diego Port District Harbor Police provides security and law enforcement in the Port District and coastal areas of San Diego County. The volume of misdemeanors processed by the Harbor Police is much higher than the volume of felony arrests. As a result, the Harbor Police expressed considerable concern the District Attorney's Office will need to be very well prepared to handle the increased workload that will result if they take on misdemeanor cases. Under current practice, the Harbor Police sends felony cases to the District Attorney and misdemeanors (citations and custody arrests) to the City Attorney. A certain volume of cases submitted to the District Attorney are reclassified as misdemeanor cases. These reclassified cases are then forwarded by the District Attorney to the City Attorney for action. If the District Attorney were to prosecute misdemeanor cases, the process of case transfer to the City Attorney would be eliminated, resulting in efficiency gains and a possible one to two week reduction in the time required to process such cases. Assuming the District Attorney has adequate resources to handle this increase in workload, the Harbor Police believes the transition can occur without significant impact on their operations.

#### San Diego County Sheriff's Department

The San Diego County Sheriff's Department views regional consolidation of services as a means to streamline government processes, and is therefore supportive of the concept of transferring the City's misdemeanor prosecution function to the District Attorney. In the case of prosecution, the ability of the District Attorney to "bundle" unrelated felony and misdemeanor charges for settlement is viewed by the Sheriff's Department as an inherent

efficiency of the District Attorney's process that is currently not realized for City of San Diego misdemeanors. Under the current system, the Sheriff's office believes inefficiencies result in instances where the City Attorney's Office processes misdemeanor cases that could have been simultaneously dismissed by the District Attorney based on their awareness of unrelated felony cases.

#### Public Defender

The Supervisor of the San Diego County Public Defender, who supervises 22 deputy public defenders, was interviewed. This office represents indigent defendants in misdemeanor cases within the city of San Diego. He previously served in the South Bay courthouse, where both misdemeanor and felony defendants are prosecuted by the District Attorney. The Public Defender has a good working relationship with both offices. Any changes for the Public Defender due to the transfer of misdemeanor prosecution from the City Attorney to the District Attorney would be dependant upon the way the Courts alter their procedures. In general, he did not predict any increase in efficiency from the proposed transfer. This is because defendants who have unrelated misdemeanor and felony cases pending at the same time would still be assigned to separate Public Defender attorneys, and would still occasionally have their misdemeanor case trailed in a disposition department until their felonies were settled. He noted that in South Bay, the District Attorney assigns unrelated felony and misdemeanor cases on the same defendant to separate prosecutors, so that the cases are not handled any differently, or any more efficiently, than those handled downtown, where misdemeanors are currently handled by the City Attorney's Office.

#### Court System

Several unsuccessful attempts were made to interview judges in the court system.

Other stakeholders also expressed an opinion on the issue.

#### San Diego Taxpayers Association

The Association has recommended several times, as recently as March 2005, that the City study the transfer of misdemeanor prosecutions to the District Attorneys Office. The Association believes that this might result in possible cost and efficiency savings for the City of San Diego. The Association's primary concern is for the City to concentrate on core services, and to review and define the priorities of the City Attorneys Office.

#### Performance Institute

As part of stakeholder review, the Task Force reviewed options compiled by the Performance Institute (PI) case study of the City Attorney's Office. One option essentially parallels the proposal presented by the District Attorney's Office, i.e. the City would enter into a Memorandum of Understanding (MOU) with the District Attorney (DA) and the DA would take over prosecution of misdemeanors committed in the City.

The PI case study reported this option as based on a 1998 proposal submitted by former District Attorney Paul Pfingst that suggested a savings potential of 20-25%. The PI case study contained three other options for misdemeanor prosecutions which differ from the District Attorney's proposal.

### **Cost Analysis**

The District Attorney's **original** proposal dated April 5, 2005 estimated a proposed \$2 million dollar savings with the proposed transfer of the prosecution of misdemeanors from the City Attorney to the District Attorney's Office.

The Criminal Division for the City Attorney's Office currently consists of 61 Attorneys, 11 non-sworn investigators and 89 support staff who screen 45,000 cases and issue 35,000 cases per year with a 95% conviction rate. Out of the 61 attorneys for the office, approximately 45 attorneys prosecute and handle the majority of the misdemeanor cases. In Fiscal Year 2004, the City Attorney's Office actual expenditures for the Criminal Division were \$12,311,054. The proposed FY 2006 budget for the current Criminal Division of the City Attorney's Office will be discussed by City Council on June 6, 2005.

The District Attorney's Office handles misdemeanors for the unincorporated area and every City in the County, except for the City of San Diego and the City of Poway. This office issues 28,000 misdemeanor cases per year with a 91% conviction rate. The revised proposal submitted by the District Attorney's Office estimates an annual contractual cost of \$9,535,357 to prosecute state misdemeanors. Under the revised proposal, the prosecution of City of San Diego Municipal Code violations and the services provided by the Code Enforcement Unit, portions of the Neighborhood Prosecution Unit, Public Integrity Unit and the Drug Abatement Response Team would not be transferred. To maintain service in those areas, the City Attorney would need to maintain a smaller Criminal Division. However, with the recent introduction of a revised proposal, time was not available for the task force to determine exactly how much of the existing Criminal Division, including the level of staff and costs, would need to remain to provide those services.

The District Attorney's Office has indicated that the cost associated with the revised proposal to transfer only prosecution of State misdemeanors is an "estimate". During the Task Force's meeting of May 18, 2005 with the District Attorney's Office, they indicated that additional details about the City Attorney's existing operations would be necessary for them to further refine the revised proposal.

To determine whether there would be a cost savings associated with a proposed transfer, the District Attorney's refined cost of prosecuting state misdemeanors would need to be provided. Then, the remaining Criminal Division in the City Attorney's Office would be added to get a true picture of the cost. Unfortunately with a new proposal presented on May 18, 2005, the Task Force was unable to fully identify which portions of the existing units would need to remain within the City Attorney's office. Neither the cost of the District Attorney's revised proposal nor the cost of a reduced Criminal Division in the

City Attorney's Office is clear at this time. In addition, other costs such as leases, revenues, potential contractual costs and rate structures have not yet been fully identified. As a result, the Task Force could not make a firm determination about whether a savings would be realized from a proposed transfer.

### OUTSTANDING ISSUES

In the relatively short time that this proposal was reviewed and analyzed, several non-budgetary issues were unable to be resolved. Non-budgetary key issues remain that would need to be resolved or studied further including:

- Legality of approval method for the transfer – differing legal opinions exist and may need to be resolved by the court system.
- Service levels – concerns were raised about the potential loss of current service levels by internal City departments and potential loss of specialized units of the City Attorney's Office should a transfer occur.
- Prioritization – concerns were raised about the level of priority that misdemeanor cases would have in the District Attorney's office and the level of unique knowledge and expertise of the attorneys assigned to these cases. In an interview with the District Attorney's office, it was clarified that some services currently provided may not be included within the revised proposal, unless specifically outlined in a contract at an additional cost.

### Conclusion

The task force concludes that there are several outstanding issues which preclude a determination or conclusion on the three issues presented by the District Attorney regarding costs, service levels and efficiencies. First, whether the prosecution of misdemeanors could be transferred from the City Attorney's Office to the District Attorney is a legal question. Second, in both the original and revised proposals, there remain unanswered questions regarding specific costs and whether all the existing levels of service would continue to be provided. The revised proposal from the District Attorney would necessitate maintaining a smaller Criminal Division within the City Attorney's Office to prosecute Municipal Code violations. Therefore, there would be two criminal divisions handling different types of misdemeanors and related services for the City of San Diego – one with the District Attorney's Office and one with the City Attorney's Office.

The task force is unable to confirm at this time whether the District Attorney's proposal would yield the \$2 million in annual savings reported in their original proposal. Issues precluding the Task Force from validating the savings estimate are:

- The District Attorney's Office revised their proposal on May 18, 2005. The revised proposal reflects a reduction in scope, meaning that the City Attorney's Office would need to retain an undetermined number of staff and resources to provide the services no longer proposed for transfer by the District Attorney. The

reduction of scope suggests that the revised savings potential would be less than previously stated and would involve the transfer of a smaller set of functions than was originally proposed.

- The District Attorney's Office has indicated that the cost associated with the revised proposal to transfer only prosecution of State misdemeanors is an "estimate". During the Task Force's meeting of May 18, 2005 with the District Attorney's Office they indicated that additional details and further information about the City Attorney's existing operations would be necessary for them to further refine the revised proposal.

Due to the many outstanding issues, it is recommended that the City Council direct the City Manager to work with the Office of the City Attorney and the Office of the District Attorney to conduct further study on the three issues identified above related to the transfer of the misdemeanor prosecution function from the San Diego City Attorney to the San Diego County District Attorney. Further, the City Manager requests guidance on the City Council's direction on additional analysis made of a revised proposal made on May 18, 2005 by the District Attorney's Office. This would enable a fully informed decision about the proposal.

Given the additional study necessary to fully analyze the revised proposal, a proposed transfer could not take place in time for the start of Fiscal Year 2006.

ALTERNATIVE

- Do not make any changes regarding the prosecution of misdemeanors for the City Attorney's Office.

Respectfully Submitted,

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Tammy Rimes  
Program Manager

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Approved: P. Lamont Ewell  
City Manager

Rimes/TR

Attachments: [A - Task Force Members](#)  
[B - District Attorney's Estimated Costs](#)  
[C - City Attorney's Memorandum](#)